IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION No. 22188 of 2004

Between:

Batraju Krishnamurthy Memorial Educational
Society, Nallacheruvu, Guntur, rep by its President
R/o Jayatowers, Arunadalpet, Guntur. ..... PETITIONER

AND

1 Government of Andhra Pradesh Education (S.E) Department
rep. by its Prl.Secretary to Government, Secretariat, Hyderabad.
2 The Commissioner and Director of School Education, A.P.Hyderabad.
3 District Educational Officer Guntur District Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondents in not taking necessary action for filling up vacant aided posts in Chenchu Aided UP.School,Nallacheruvu, Guntur pursuant to the proceedings of the 2nd respondent in L.Dis No.165/B1-3/2002, dt.7.6.2003 as illegal arbitrary and consequently direct the respondent to permit the petitioner fill all the existing aided vacancies of S.G.T. in their school.

Counsel for the Petitioner : Mr.N.SUBBA RAO

Counsel for the Respondents : G.P. FOR EDUCATION

The Court made the following :

ORDER:

Questioning the action of the respondents in not filling up two vacant aided Secondary Grade posts that arose consequent upon retirement of Teachers in the school run by the petitioner-society as per G.O. Ms. No.8, Education, dated 30.1.2003, the present writ petition is filed.

The petitioner-society established a school in the name of Chenchu Aided Primary School, Nallacheruvu, Guntur in the year 1964. Subsequently, the school was upgraded into Upper Primary School, with a sanctioned strength of 8 posts, which the petitioner states, were admitted to grant-in-aid. The petitioner states, on attaining the age of superannuation, two vacancies arose due to retirement of two Secondary Grade Teachers in the years 2000 and 2001. The petitioner states that it sent proposals to the competent authority for filling up the said vacancies, and when there was no response, the petitioner filed writ petition in W.P. No. 26342 of 2001 seeking a direction to the respondents to consider the proposals sent by them expeditiously. By order dated 8.8.2002, this Court disposed of the said writ petition directing the respondents to consider and pass appropriate orders on the proposals submitted by the petitioner for filling up the two aided vacancies, within a period of four weeks from the date of receipt of the order. Pursuant thereto, the petitioner states that the Government issued Memo dated 18.10.2002 directing respondents 2 and 3 to implement the orders dated 8.8.2002 passed by this Court in the above writ petition. In pursuance thereof, respondent No.2 issued proceedings dated 7.6.2003 directing respondent No. 3 to take necessary steps for filling up of two vacant aided posts that arose due to the retirement of two Teachers in the school run by the petitioner-society. The petitioner states that even though respondent Nos. 1 and 2 passed the aforementioned orders, the respondents have not taken any concrete steps on the proposals submitted by the petitioner for filling up the aided posts. Hence this writ petition.

The learned Government Pleader for School Education, in spite of taking time twice for filing counter, has not filed any counter, but produced a Memo dated 20-10-2004, and submitted that as there is a general ban on recruitment imposed by the Government, the respondents have not filled up the aided vacancies, and therefore,

no exception can be taken to the action of the respondents in not considering the proposals sent by the petitioner for filling up the two aided vacancies that arose consequent upon the retirement of two teachers.

The learned counsel for the petitioner on looking into the Memo issued by the Government submitted that the general ban on recruitment imposed by the Government is applicable only to creation of new posts and does not affect the consideration of the proposals sent for filling up the two aided vacancies that arose consequent upon retirement of two teachers. In support of his contention that a duty is cast on the Government to provide grant-in-aid to private schools and it cannot disown its responsibility to fill up the aided posts on the ground of lack of resources, placed reliance on the judgment of the apex Court in **Chandigarh Administration v. Rajni Vali.**

Heard the learned counsel for petitioner and the learned Government Pleader for Education for the respondents, and both of them agreed for disposal of the writ petiton at the stage of admission.

I am unable to agree with the contention of the respondents that the general ban imposed on recruitment by the Government in the orders issued in Memo dated 20.10.2004 is applicable even to the case of the petitioner. To wit, it would be appropriate to reproduce the contents of the Memo, which reads:

> No new posts of grant-in-aid would be created and the existing vacancies will also not be filled up, except what has been specifically authorized since there is a general ban on recruitment except for the posts, for which permission was specifically granted by the Government.

Though, in the Memo issued by the Government, it is stated that no new posts of grant-in-aid would be created and the existing vacancies will also not be filled up, but in the very same Memo, it is stated that general ban is not applicable for the posts, for which permission was specifically granted by the Government. In the instant case, consequent upon retirement of two aided teachers, the petitioner sent proposals to the competent-authority for filling up the aided posts, and when it did not receive consideration, the petitioner filed writ petition in W.P. No.26342 of 2001, and this Court while disposing of the said writ petiton, by order dated 8.8.2002, directed the respondents to consider the proposals submitted by the petitioner for filling up of two aided vacancies. Pursuant to the order of this Court, it is required to notice that respondent No.2 even issued proceedings dated 7.6.2003 directing

respondent No. 3 to take necessary steps for filling up of two vacant aided posts in the school run by the petitioner that arose due to the retirement of two aided Teachers. The general ban on recruitment imposed by the Government came into force only from 20-10-2004, whereas the petitioner submitted proposals for filling up of the two aided posts way back in the year 2001, and the same cannot be made applicable to the case of the petitioner and more so when respondent No.2 had even directed respondent No.3 to take appropriate steps for filling up the two vacant aided posts in pursuance of the orders passed by this Court in the writ petition, filed by the petitioner challenging the inaction on the part of the respondents in considering the proposals sent by the petitioner for filling up the two aided posts that arose consequent upon retirement of two aided teachers.

In the above view of the matter, and having regard to the fact that there is already an order dated 8.8.2002 by this court in W.P. No. 26342 of 2001, directing the respondents to consider the proposals sent by the petitioner for filling up the two aided posts, the respondents also having taken some steps in pursuance thereof, now cannot be allowed to contend that in view of the Memo dated 20.10.2004 issued by the Government imposing general ban on recruitment, the proposals sent by the petitioner for filling up the two aided vacancies, have not been considered.

In the result, the writ petiton is allowed and the respondents are hereby directed to take necessary steps to fill up the two vacant aided posts in Chenchu Aided Upper Primary School, Nallacheruvu, Guntur, in accordance with law. No costs.

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N.V.RAMANA, J

Date: 9.12.2004

DA/KSR

To

1 The Principal Secretary, Government of Andhra Pradesh Education
(S.E) Department, Secretariat, Hyderabad.

2 The Commissioner and Director of School Education, A.P.Hyderabad.
3 The District Educational Officer, Guntur District, Guntur.

4 Two CCs to the G.P. for Education, High Court Buildings,
Hyderabad (OUT).

5 Two CD copies.